IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

**O R D E R**

Pollar Marmo Agglomerates Ltd. Vs. State & Ors.

S.B.CIVIL WRIT No. 4032 of 1993
UNDER ARTICLE 226 & 227 OF THE
CONSTITUTION OF INDIA.

Date of order : 18th January, 2007

**PRESENT**
**HON'BLE SHRI N.P.GUPTA,J.**

Mr. Rajendra Mehta, for the petitioner.
Mr. B.S. Charan, for the respondent.

**BY THE COURT:**

By this petition, the petitioner seeks a mandamus against the respondents for quashing the collection of octroi duty on exempted goods, i.e. plant & machinery and raw material, and has also prayed for refund of the amount so deposited along with interest.

The facts of the case are, that the petitioner company commissioned a factory for production and marketing of marble agglomerates slabs and tiles, and it came into commercial production on 24.4.1991. Then, it is pleaded that under a scheme for exemption, which scheme was

initially in force upto April, 1990, but then that time was extended, and within the extended time the factory was commissioned, and came into commercial production. Then, according to the petitioner the State Government floated an incentive scheme, which included exemption from payment of octroi on certain articles, and a proper notification under Section 107(5) of the Rajasthan Municipalities Act, hereafter referred to as the Act, was issued by the Government on 19.6.85, providing exemption to the factories to come up by 31.3.1990. Then, a corrigendum in this notification was issued. This notification provided interalia for exemption on import of plant and machinery. Then, another notification was issued on 3.7.1990, which was published in the official gazette on 13.9.1990, under Section 107(5) of the Act granting exemption on raw material also. Both these notifications granted exemption, subject to certain conditions, giving certain powers to the committee, to decide admissibility of exemption on particular items. Then, the petitioner accordingly submitted application Annexure-5, for exemption on octroi, along with check list. It is in this continuation, that the Committee contemplated by Annexure-2 and 3 considered the matter on 1.6.1991 (Annexure-9) sanctioning exemption on import of goods worth Rs. 4,64,86,094/-, and on import of raw material for one month mentioned therein worth Rs. 79.13 lacks. The exemption certificate was issued by the office of Director Local Bodies. Accordingly vide Annexure-

10, 11, 12, 13 and 14 exemptions were granted. According to the petitioner since the goods had already been imported, he had to deposit the amount representing octroi, by way of security deposit, and a document in that regard is produced as Annexure-8. The case of the petitioner is, that thereafter vide Annexure-16 dt. 21.8.1991, the Director, Industries directed Director, Local Bodies, to direct the Municipalities concerned, to refund the amount of octroi at the earliest. The petitioner thereupon followed up the matter by sending letters, starting from Annexure-17, dt. 31.8.1991 itself, but to no good. Except that a shelter is sought to be taken under Rule 14(8) of the Rajasthan Municipalities (Octroi) Rules, 1962, hereafter referred to as the Rules. With these averments, the above reliefs have been claimed.

Municipal Council, respondent no.4 filed reply, and in substance the stand taken is, that exemption can be granted under Section 107(5) of the Act, and the order Annexure-13 etc. is not in accordance with the provisions. To quote the precise words pleaded by the respondents at page-9 of the reply "....Further, this Hon'ble Court will find a great difficulty in distinguishing the items out of the list presented which are covered by clause (2) of the notification and for which at the time of importing, the petitioner deposited the octroi duty. Notwithstanding that subsequently by Annx. 13 dated 7.10.1991 the Committee

exempted these goods which were previously refused to be exempted, This order, is contrary to clause (2) of the notification Annx. R 4/1....the exemption of octroi duty is void and illegal, because, under Sec. 107(5) of the Act, the State Government is empowered to grant and define exemption from taxes on certain goods....” The other contention raised is, that on the face of the provisions of Rule 14(8), the refund cannot be claimed after expiry of more than two months from the date of deposit of the octroi, even in cases where the goods are exempted once, and since the claim has been made after expiry of the period, the claim cannot be entertained, and an order Annexure R 4/2 dt. 2.5.92 had already been passed by the Director, Local Bodies, declining the refund on account of expiry of more than two months from the date of deposit of the amount. The thrust of the contention further is, that in view of Annexure 2 and 4 also the petitioner was required to produce exemption certificate at the time of import of the goods or to deposit the octroi, and in the event of exemption, to claim refund of the amount within two months thereafter, while admittedly the certificate was not issued at that time, the petitioner is not entitled to refund.

I have considered the submissions, and have gone through the documents available on record.

At the outset it may be observed, that the respondent has not disputed the fact of issuance of the documents Annexure 9 to 14. The question raised is about their legality. Admittedly these orders have not been challenged by the respondents. In the writ of the petitioner, it is not open to the respondents to challenge the correctness or validity of these orders unless they are challenged in accordance with law. In that view of the matter, these Annexures 9 to 14 have to be taken on the face value, which clearly granted exemption. Then, a look at Annexures 2 and 4 (including Annexure R 4/1) does show that thereby exercising powers under Section 107(5) of the Act, the State Government granted exemption from payment of octroi on certain items, on certain conditions, and these orders Annexures 9 to 14 have been passed in accordance with Annexures 2 and 4, by the authority competent contemplated therein, and in accordance there with. Since it is not in dispute, that factory did commence commercial production since 24.4.1991, and these exemptions Annexures 9 to 14 are admittedly of much later dates, so much so that they are of the date much later than the period contemplated by Rule 14(8). Obviously, if the bar of Rule 14(8) of the Rules were intended, or contemplated to be invoked, then there was no occasion for issuing these orders, on the dates they are issued, and by Annexure-16 the Director Industries clearly directed the Director Local Bodies to direct the Municipalities concerned to refund the

octroi. This Annexure-16, as noticed above, is dated 21.8.1991. It is reasonable to conclude, that it is from this date that it has finally became clear to the petitioner, that the petitioner is entitled to get the amount of octroi refunded, and immediately thereafter the petitioner pursued the matter by sending communication Annexure-17, and the matter went on. In such circumstances, the provisions of Rule 14(8) can possibly not be said to be attracted to the present case. It is a different story, that Rule 14(8) only comprehend the situation, which is to occur at the time of actual import of the goods, requiring the person importing goods to deposit the octroi, if he does not produce the requisite certificate of exemption at the time of entry, and then produces it, then that entitles him to apply for refund within two months. Here in the present case, admittedly, exemptions were granted much later, and therefore, eventualities comprehended by Rule 14 (8) are not at all attracted in the present case.

In view of the above discussion, the inescapable conclusion is, that in view of Annexure 9 to 14 read with Annexure-16 the petitioner is entitled to refund of the octroi, as deposited by the petitioner, on the goods covered by Annexure 9 to 14, and the stand taken by the respondents on the anvil of Rule 14(8) cannot be sustained.

Accordingly, the writ petition is allowed, and the

respondents are directed to refund the amount of octroi as above, to the petitioner, within a period of one month from today along with interest @ 6% per annum from the date of Annexure-16, till actual payment. The parties shall bear their own costs.

(N.P.GUPTA), J.